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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

F.A.O. No. 1136 of 1987.
Date of Decision : Dec. 13, 2006

Prem Lata Dhingra and others

... Appellants.

Versus

Punjab Roadways and others

.. Respondents

CORAM : Hon`ble Mr. Justice Pritam Pal.

Present : Shri K.S.Cheema, Advocate,
for the appellants.

Shri S.S.Randhawa, Assistant Advocate General, Punjab,
for respondent Nos. 1 and 2.

None for respondent No.3.

PRITAM PAL , J.

Prem Lata Dhingra, (widow), Suneel Dhingra, (son), Harish Dhingra, (minor son) and Manjoo Dhingra, (minor daughter) of Rajinder Kumar Dhingra (since deceased) have brought this appeal against judgment dated 22.7.1987, passed by learned Motor Accident Claims Tribunal, Hoshiarpur, (hereinafter referred to as "the Tribunal"), whereby their claim petition for seeking a compensation in the sum of Rs.10,00,000/-, on account of death of said Rajinder Kumar Dhingra, which took place in a vehicular accident on 17.7.1986, in the area of Police

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Station, Tanda, District Hoshiarpur, was dismissed.

Brief facts, culminating to the commencement of this appeal, may be recapitulated thus:

On 17.7.1986, at about 1.00 PM, Rajinder Kumar Dhingra, aged about 49 years, was going on his scooter, bearing No. DEM-7701 towards his house. When he was just near his Cold Storage at Garhdiwala, he slowed-down his scooter for taking a turn towards the right-side on the *kacha* road. At that time, a bus bearing No. PNH-8144 of Punjab Roadways, Hoshiarpur Depot, driven by respondent No.3, Meet Singh, came from the side of Hoshiarpur. The bus was being driven rashly and negligently by respondent No.3. It struck against the scooter, as a result of which, Rajinder Kumar Dhingra fell-down at some distance. In the accident, he sustained multiple injuries and ultimately expired on 20.7.1986. The accident was witnessed by Harbhajan Singh (AW-7) and Mukhtiar Singh son of Harnam Singh of Village Hirpur, District Hoshiarpur. It was also averred in the claim petition that the Punjab Roadways authorities, in connivance with the police officials, also managed to get a false report recorded on the statement allegedly made by the deceased, which in fact, was never made by him and thus, no criminal case could be got registered against the bus driver. The claimants-appellants (hereinafter referred to as "the appellants") in their claim petition, sought a total compensation of Rs. 10.00 lacs by giving the details pertaining to the income of the deceased.

Upon notice, the respondents appeared and they filed their respective written statements, wherein, they denied the allegations of the

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appellants. However, the occurrence of the accident at the given place and time was admitted. At the same time, it was averred that the accident in question occurred due to rash and negligent driving of the scooterist (deceased). As no criminal case was registered against the bus-driver, therefore, it was claimed that the appellants were not entitled to any compensation.

On the pleadings of the parties, the following issues were framed by the learned Tribunal :-

"1. Whether Rajinder Kumar Dhingra died on 20.7.1986 in motor vehicle accident on 17.7.1986 due to rash and negligent driving by Meet Singh driver of Bus No. PNH-8144 in the area of Garhdiwala? OPA

2. Whether the claimants are entitled to compensation? If so, to what amount and from whom? OPA.

3. Relief."

Learned Tribunal, after recording the evidence and hearing counsel for the parties, came to the conclusion that since Rajinder Kumar Dhingra (deceased) was approaching from link road to main road, therefore, it was his responsibility to take all precautions, which he failed to do so. Hence, he himself was liable for the occurrence of the accident in question.

After giving the aforesaid observations, learned Tribunal returned its finding on issue No.1 against the appellants. In the result, without giving any finding on the remaining issues, learned Tribunal dismissed the claim petition, as indicated in the opening paragraph of this

judgment.

This is how feeling aggrieved, the appellants have come up in this appeal.

I have heard learned counsel for the parties and gone through the records carefully.

The first and foremost contention of Shri K.S.Cheema, Advocate, learned counsel for the appellants, is that here in the instant case, the finding on issue No.1 is against the pleadings as well as the evidence, which too was based beyond the pleadings. In this regard, Shri Cheema referred to paragraphs No. 9 and 11 of the impugned judgment and then submitted that the learned Tribunal has erroneously opined while making out a case of scooterist for going from link road to main road. In fact, the accident in question had taken place on the *kacha* portion and just near the berm of the main road, which falls in front of the cold storage of the deceased. This factum of occurrence of the accident is recorded in the statement of eye-witness Harbhajan Singh, AW-7. Shri Cheema then also made reference to the written statement filed by Gurmit Singh, driver, respondent No.3, wherein it was nowhere mentioned that the scooterist was coming from link road or that there were bushes on both sides of the road which prevented him from seeing any vehicle coming from the side of link road. After pointing out the aforesaid discrepancies in the pleadings and the evidence, Shri Cheema has vehemently argued for reversing the finding of the Tribunal given on issue No.1.

On the other hand, Shri S.S.Randhawa, learned Assistant Advocate General, Punjab, appearing on behalf of respondent Nos. 1 and 2

argued that in fact, Rajinder Kumar Dhingra, who was on the scooter, at the time of accident, was not cautious while coming from link road to the main road, on which bus was going at slow speed from Hoshiarpur side. So the learned Tribunal has rightly held the scooterist liable for the occurrence of the accident in question.

I have given my thoughtful consideration to the rival contentions of learned counsel for the parties and find that the points of arguments, raised on behalf of the appellants, are not altogether devoid of any merit, inasmuch as, it is no where mentioned in the pleadings of the parties that there was any link road, from where the scooterist (deceased) was coming for approaching the main road. In fact, it is apparent from the evidence of AW-7 Harbhajan Singh, an eye witness, that the accident in question had taken place on the *kacha* portion of the road and just near its berm. This factum has been categorically pleaded in the claim petition itself and the same has been duly corroborated by the aforesaid eye-witness. Not only that, the aforesaid version of the said witness also goes unchallenged in his cross-examination.

On the other hand, Gurmit Singh, bus-driver, while appearing as RW-1, stated that his bus was at a speed of 20-25 kilo meters per hour and the speed of the scooter was 60-65 kilo meters per hour, at the time of accident. Here it is also pertinent to mention that it is undisputed that the scooterist had started from near the Machine room of his Cold storage, which is at a distance of just 20-25 *karams* from the main raod. If it was so, then it was not believable that the scooterist would gain the speed of 60-65 kilo meters per hour, within such a short distance, which comes to

about 100 feet. At the same time, the version of the bus-driver is also not believable that the speed of his bus, which was moving on the main road, was 20-25 kilo meters per hour, especially in view of the fact when he stated that there were skid-marks on the road because of his applying the breaks at that speed. Here, it is also observed that had the scooterist been a little-bit cautious, while approaching towards the main road, the accident in question could have been averted.

From the facts and given circumstances, as discussed above, I am of the considered opinion that in fact, the bus-driver as well as the scooterist (deceased) were equally liable for causing the accident in question. Hence, their liability is fixed in the ratio of 50 : 50. Accordingly, the finding of the learned Tribunal, on issue No.1, is reversed.

It is well settled that the Motor Accident Claims Tribunal is also bound to give its findings on all the issues, including the issue pertaining to the quantum of compensation payable to the claimants. But here in the instant case, it had failed to do so. Therefore, this matter is remitted to the learned Tribunal for giving its finding on the remaining issues, on the basis of evidence already brought on the file, after hearing learned counsel for the parties.

In view of my foregoing discussion, this appeal is allowed and the parties, through their counsel, are directed to appear before the learned Tribunal on 16th January, 2007, and after hearing the parties, the claim petition shall be decided in the light of above observations of this Court. Since the matter pertains to the accident, which occurred in the year 1986, the learned District Judge, Hoshiarpur, shall ensure that this case is

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disposed of expeditiously, preferably within two months from the date of receipt of a copy of this order. Registry is directed to send a copy of this order for necessary compliance.

The trial court records be also sent back forthwith.

[PRITAM PAL]
JUDGE

Dec.13, 2006
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